ment are removed.[8] And yet the Supreme Court has sustained an assessment, under the New York statute, upon an estate appointed under a power granted before the existence of the tax but exercised, by will, thereafter.[9] But this is no exception to the above doctrine, for the interest is regarded as created as of the time of the exercise of the power, and the state is there again levying on a testamentary disposition. But the New York Court of Appeals decided that a vested remainder is not subject to a subsequently enacted inheritance tax law.[10] The same court now accords similar protection to a contingent remainder. *Matter of Lansing*, 182 N. Y. 238. In other words, from the constitutional, as distinguished from the conveyancing point of view, it regards a contingent remainder as a vested right. While there are important technical differences between vested and contingent remainders in the law of Property, there is little difference in substance. Whether a remainder is vested or contingent is largely a matter of phraseology, and that can hardly control the immediate question. Alienability seems to be, perhaps, the common element of interests that are protected as vested. At common law contingent remainders were inalienable and could be destroyed by tortious feoffments. But the differences in the property incidents of the two classes of remainders have now been almost universally nullified by statute. In most jurisdictions contingent remainders are now alienable and indestructible except by the contingencies on which their fate depends.[11] The owner of a contingent remainder has, therefore, a vested right to have the estate when the contingency happens, and that right the legislature should not be permitted to impair by levying a transfer tax for a privilege which has previously ripened into a right. It is conceived, however, that when the remainder is limited to a living man's "heirs," the state may, prior to its vesting, tax the receipt of such property. For to allow a man to become the heir of any person is a privilege which the state may withdraw or alter, and may therefore charge for permitting to continue.

LAW GOVERNING POWER OF APPOINTMENT BY WILL. — In considering what law determines the sufficiency of a will as an exercise of a testamentary power of appointment over personalty, two questions are involved: First, is the instrument, alleged to exercise the power, such a "will" as satisfies the direction of the donor of the power, that the power shall be exercised "by will"? Second, if it is a valid will, does it amount to an exercise of the power? Both of these questions may come up for decision in cases where the donee of a testamentary power of appointment dies domiciled in a different country from the donor, leaving a will which is alleged to exercise the power. In such cases the execution of the power is commonly to be found, if at all, in a universal legacy contained in the will, no direct reference to the power or the property subject thereto being made by the testator.

In both England and the United States the instrument in question is held to be a sufficient "will" if made in accordance with the law of the

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[8] Matter of Seaman, 147 N. Y. 69.

[9] Orr *v.* Gilman, 183 U. S. 278. See also Carpenter *v.* Commonwealth, 17 How. (U. S.) 456; Gelsthorpe *v.* Furnell, 20 Mont. 299, 310.

[10] Matter of Pell, 171 N. Y. 48.

[11] 21 L. Quar. Rev. 118, 119, note.

domicile of the donee at his death.[1] This seems a necessary application of the broad doctrine that a will of movables which is valid by the law of the testator's domicile at his death is valid in other countries.[2] In England, by a further extension which is established by authority but questioned as to principle, the power may also be exercised by a will conforming to the law of the donor's domicile.[3] A will not conforming to the law of the donee's domicile, but admitted to probate by statute,[4] is held in England incapable of exercising the power unless executed according to English law.[5]

Whether a given will constitutes an exercise of the power is determined in the United States by the law of the domicile of the donor.[6] This rule rests on the theory that the donee is merely the agency through which the donor designates the beneficiary, who takes under the instrument creating the power and not under that by which the power was exercised.[7] In an English case, however, the law of the donee's domicile is taken to govern.[8] The decision in this case is not so strong as the American decisions, for the instrument in question was not a good execution of the power by the law of the donor's domicile, and to the law of the donee's domicile powers of appointment were unknown. The case has been followed in a recent English decision which adopts its conclusion on similar facts, but leaves in confusion the question whether the law of the donee's or that of the donor's domicile governs. *In re Scholefield*, 21 T. L. R. 675.

The view taken by the English court, that the question whether the will constituted an execution of the power is to be determined by the law of the donee's domicile, seems sound. Even if the donee is a mere agent of the donor, he has an option of exercising the power, and his intention in this respect is not subject to the donor's control. The question being whether the power was exercised or not, the intention of the donee would seem the test. His intention, however, may not appear in the will. Indeed, in the common case, the will makes no reference to the power or to the property over which the power is held, but the only language from which an execution of the power may be found is that of a universal legacy. Where the intention does not clearly appear, but has to be found by implication from the language of the will, the law which decides whether it will thus be found should be the law with regard to which the will was written. That law is presumably[9] the law of the domicile of the donee.[10]

DUPLICATES AS PRIMARY EVIDENCE. — Any one of duplicate instruments may be introduced in evidence without accounting for any other.[1] In this

[1] D'Huart *v.* Harkness, 34 Beav. 324; see Ward *v.* Stanard, 82 N. Y. App. Div. 386.
[2] Dicey, Conflict of Laws 684.
[3] In the Goods of Huber, [1896] P. 209; In the Goods of Hallyburton, L. R. 1 P. & D. 90.
[4] St. 24 and 25 Vict. c. 114, § 1.
[5] Hummel *v.* Hummel, [1898] 1 Ch. 642; see also *In re* Kirwan's Trusts, 25 Ch. D. 373.
[6] Sewall *v.* Wilmer, 132 Mass. 131; Bingham's Appeal, 64 Pa. St. 345.
[7] Cotting *v.* De Sartiges, 17 R. I. 668, 671.
[8] *In re* D'Este's Settlement Trusts, [1903] 1 Ch. 898.
[9] *Cf. In re* Price, [1900] 1 Ch. 442.
[10] Wharton, Conflict of Laws, 3d ed., 1315.

[1] 2 Wigmore, Ev. § 1232.